

1 Marc Sobel, is that correct?

2 A Yes.

3 Q Who prepared this document?

4 A The law firm of Brown and Schwaninger.

5 Q Who requested that they prepare it, if you recall?

6 A My best recollection is Marc Sobel.

7 Q Do you know why Marc Sobel requested that they
8 prepare this document?

9 A He had seen several of his licenses appear on a
10 draft of the Hearing Designation Order and wanted to make
11 certain that the arrangement between he and I was legal and
12 proper and reduced to writing, so that it could be
13 scrutinized, if necessary.

14 Q Let me refer you to WTB Exhibit 340. That's also
15 entitled Radio System Management and Marketing Agreement?

16 A Yes.

17 Q This is dated December 30, 1994.

18 A Yes.

19 Q Do you know why this was granted, why there's a
20 difference in dates between the two documents?

21 A It was redone because initially I had -- it was --
22 Marc was the primary driving force behind it. I had not
23 read it sufficiently carefully enough that I had to make a
24 check to exercise the option. Hence, we had to redo it for
25 me to exercise the option.

1 Q Okay.

2 A And, I gave Marc a check on a timely basis.

3 Q Don't you mean that it contained an option?

4 A Yes, to execute the option.

5 Q So, this document, the one that's dated December
6 30, 1994, superseded the document dated October 28, is that
7 correct?

8 A That's correct.

9 Q Was there any other reason for the change, to the
10 best of your knowledge?

11 A Not that I recall.

12 Q Could I refer you, please, to WTB Exhibit 341?

13 A We may have added additional call signs, yes.

14 Q Thank you. So, the marketing agreement dated
15 December 30, 1994, along with the addendum and amendment,
16 also dated December 30, 1994, are those documents still
17 operative?

18 A No.

19 Q And, when did they cease being operative?

20 A A few days ago.

21 Q Pardon me?

22 A A few days ago.

23 Q And, how did they cease being operative?

24 MR. SCHAUBLE: Objection, relevancy.

25 CHIEF JUDGE CHACKIN: Overruled.

1 THE WITNESS: A new agreement was prepared and
2 executed between Mr. Sobel and myself.

3 BY MR. SHAINIS:

4 Q And, what was the reason a new agreement was
5 prepared?

6 MR. SCHAUBLE: Objection, relevance.

7 CHIEF JUDGE CHACKIN: Overruled.

8 THE WITNESS: Because while we believed the
9 initial agreement was perfectly legal in all four corners,
10 the Commission's scrutiny and the ruling that came from the
11 Marc Sobel matter clearly indicated that the agreement may
12 have some problems. So, we have had counsel draft a new
13 agreement which hopefully will be more on all four corners
14 with the Commission's expectations, and we executed the new
15 agreement.

16 MR. SHAINIS: Thank you. Your Honor, can I have a
17 few minutes?

18 CHIEF JUDGE CHACKIN: All right, we'll go off the
19 record.

20 (Whereupon, a short recess was taken.)

21 CHIEF JUDGE CHACKIN: Back on the record.

22 MR. SHAINIS: Thank you. Your Honor, I'd like to
23 have marked for identification as Kay Exhibit 64 a document
24 that consists of six pages and is entitled Amended Radio
25 System Agreement.

1 CHIEF JUDGE CHACKIN: The document described will
2 be marked for identification as Kay Exhibit 64.

3 (The document referred to was
4 marked for identification as
5 Kay Exhibit 64.)

6 MR. SHAINIS: Just a minute and I'll hand them
7 out. I'm handing two to the court reporter.

8 (Pause.)

9 BY MR. SHAINIS:

10 Q Mr. Kay, would you review that and I'll give the
11 Court an opportunity, as well. Mr. Kay, is this the current
12 agreement you have, operating agreement you have with Mr.
13 Sobel?

14 A Yes, it is.

15 Q And, he drafted this agreement?

16 MR. SCHAUBLE: Objection, relevance, Your Honor.
17 This has no relevance to any of the issues in this
18 proceeding.

19 MR. KNOWLES-KELLETT: It doesn't go to the misrep
20 and it doesn't go to the transfer of control and we just
21 don't see where he's headed with this, Your Honor.

22 CHIEF JUDGE CHACKIN: Overruled.

23 MR. KNOWLES-KELLETT: Can we ask what issue it
24 goes to?

25 CHIEF JUDGE CHACKIN: It can be used for possible

1 mitigation of the charges. It is a fact that since these
2 charges have brought here, their attempt did not satisfy the
3 Commission. I agree with you it doesn't have any bearing on
4 the transfer of control issue, as such, but as I say, I
5 think there's mitigation. If the claim is made with the
6 licensee despite everything -- has not done anything,
7 despite the Sobel decision, this is to show that the
8 licensee has taken steps.

9 MR. SHAINIS: That's exactly what it's being used
10 for, Your Honor.

11 CHIEF JUDGE CHACKIN: Overruled.

12 MR. SCHAUBLE: Very well, Your Honor.

13 THE WITNESS: I believe it was prepared by Robert
14 Keller.

15 BY MR. SHAINIS:

16 Q Who requested Mr. Keller to prepare this document?

17 A Mr. Sobel and myself.

18 MR. SHAINIS: Your Honor, I would like this
19 document to be admitted as Kay Exhibit 64.

20 CHIEF JUDGE CHACKIN: Is there an objection? Kay
21 Exhibit 64 is received.

22 MR. KNOWLES-KELLETT: For the record, there was
23 represented no objection, Your Honor.

24 CHIEF JUDGE CHACKIN: That's the only reason I
25 would receive it. Kay Exhibit 64 is received.

1 (The document referred to,
2 having been previously marked
3 for identification as Kay
4 Exhibit 64, was received in
5 evidence.)

6 BY MR. SHAINIS:

7 Q Mr. Kay, you testified earlier concerning the use
8 of loaners by your company, is that correct? Do you recall
9 that testimony?

10 A Yes.

11 Q And, loaners are provided by Lucky's, is that
12 correct? Or, is it Southland?

13 A Primarily, Southland, although occasionally
14 Lucky's has used them, too.

15 Q In addition to Lucky's providing loaners, are
16 there other dealers that you supply service to that utilize
17 loaners?

18 A My company, Lucky's, works in conjunction with a
19 little more than two dozen other dealers who use our
20 systems. And, they use loaners, demos, rentals, all types
21 of uses on our systems.

22 Q All right, loaners, demos, rentals and also talk
23 arounds?

24 A They use talk arounds, and they also have their
25 own in-shop, several of them also have their own in-shop

1 communications licenses.

2 Q So that the record is clear, can you explain what
3 you mean by a talk around?

4 A To obtain wide area coverage, you put a repeater
5 on high ground and the normal unit will transmit up to a
6 repeater whereas we broadcast down to the mobile units.
7 Talk around is where a mobile will transmit on the base
8 transmit's frequency, generally, directly to the other
9 mobile, where it's known as unit to unit, car to car,
10 portable to portable. It's where they communicate directly
11 without benefit of using the long-range relay. They have
12 been used for like electrical contractors. If you use a
13 portable to talk through a repeater, to mobile units across
14 the city or their office across the city. They can also
15 talk portable to portable within a building, for
16 coordinating pulling wire, for example, through conduits.
17 For local job site communications. They can do
18 both with the same radio. The talk around provides the
19 local job site communication.

20 Q And, explain for the record the relationship with
21 the dealers? The dealer sells service on your system, is
22 that correct?

23 A We have quite a quantity of dealers that we work
24 with. As part of my arrangements with them, we provide
25 codes for their own shop use, for their use of demo radios

1 for customers, which they can also use for loaners or for
2 rentals. They have direct access to our systems to use as
3 they choose, which is provided without charge. They also
4 provide customers to us for billing purposes.

5 If they go out and demo a system to the ABC
6 Company, they have codes that are operational on our system
7 for those radios, then when they sell the radios to, for
8 example, the ABC Company, they will tell us about ABC
9 Company, how many units they're buying, and they'll get new
10 codes for that company.

11 We will then bill that ABC Company and give
12 commissions to the referring dealer for that company.

13 Q So, the dealer essentially is either selling or
14 utilizing services supplied by your repeaters, correct?

15 A Correct. We give them courtesy freebie service in
16 exchange for their referring customers to us, paying
17 customers to us.

18 Q And, the count of the amount of loaners, demos and
19 rentals that these dealers use, that was applied through
20 your loading, is that correct?

21 MR. SCHAUBLE: Objection, Your Honor, that's a
22 legal conclusion.

23 CHIEF JUDGE CHACKIN: Would you repeat the
24 question?

25 MR. SHAINIS: I'm sorry, what did you say, Your

1 Honor?

2 CHIEF JUDGE CHACKIN: Would you repeat the
3 question?

4 MR. SHAINIS: I'll actually reword the question.

5 CHIEF JUDGE CHACKIN: All right.

6 BY MR. SHAINIS:

7 Q When they utilize loaners, demos and rentals, they
8 are operating pursuant to your repeater authorization, is
9 that correct?

10 A Yes.

11 Q With respect to Lucky's and Southland, what is the
12 average number of loaners, demos and rentals and talk
13 arounds -- I'm sorry, let's limit it to loaners, demos and
14 rentals that they would have out on a given day?

15 MR. SCHAUBLE: Is there a time frame to that
16 question?

17 BY MR. SHAINIS:

18 Q Prior to December 31, 1994?

19 A It would vary anywhere between half a dozen units
20 to, on occasion, 100 units.

21 Q What would you say would be the average?

22 A In an average week, I'd say we'd probably have
23 anywhere -- figure around 25, 30 units out.

24 Q And, would you say the same thing applies to the
25 dealers?

1 A It varies on the dealers. It could be anywhere
2 between a handful or I know some of the dealers have large
3 inventories, could have 50 or 60 radios. I suspect it
4 probably is -- my estimate would be at any given time,
5 probably an average of around 15 to 20 per dealer. That's
6 for their own shop use and for the demos and loaners.

7 CHIEF JUDGE CHACKIN: We're talking what time
8 period now?

9 MR. SHAINIS: Prior to December 31, 1994.

10 CHIEF JUDGE CHACKIN: Does the witness understand
11 the question asked?

12 THE WITNESS: Yes.

13 CHIEF JUDGE CHACKIN: All right.

14 BY MR. SHAINIS:

15 Q I'm going to ask you, for example, Metro Mobile
16 Communications --

17 A Yes.

18 Q -- is that a dealer that gets service from one of
19 your dealers?

20 A Yes.

21 Q They utilize loaners, demos and rentals?

22 A Yes, they have codes assigned and we know they
23 used them.

24 Q Is Portable Clinic another such dealer?

25 A Yes.

1 Q They also utilize loaners, demos and rentals?

2 A Yes.

3 Q For all other questions for now when I ask for a
4 dealer, the question includes their use of loaners, demos
5 and rentals and also if they are a dealer that utilizes
6 repeater service, okay?

7 A Yes.

8 Q Digital Communications?

9 A Yes.

10 Q Communications Center?

11 A Yes.

12 CHIEF JUDGE CHACKIN: What time period are you
13 talking about now?

14 MR. SHAINIS: Prior to December 31, 1994.

15 CHIEF JUDGE CHACKIN: All right, all these
16 questions relate to prior to December 31, 1994, all right.

17 BY MR. SHAINIS:

18 Q Solder Joint or sold-er?

19 A Solder.

20 Q I'm sorry.

21 A Yes, I believe it on with us in that period of
22 time.

23 Q Communications Techniques?

24 A Yes.

25 Q Commercial Communications?

1 A Yes.

2 Q Cumulus Communications?

3 A Yes.

4 Q Frank's Radio?

5 A Yes.

6 Q Lee's Two-Way Radio?

7 A Yes.

8 Q Peak Communications?

9 A I believe we were in that period of time with
10 them, too.

11 Q BMW Communications?

12 A Yes.

13 Q Mobile Communications Service?

14 A Yes.

15 Q Parker Communications?

16 A I believe so. He is now. I'm not sure how far
17 back he went.

18 Q Chapman Electronics?

19 A Yes.

20 Q Centech Communications?

21 A Yes.

22 Q Lone Star Radios?

23 A Yes.

24 MR. SCHAUBLE: We request that counsel ask the
25 questions a little more slowly. We're trying to take notes.

1 MR. SHAINIS: I'm sorry.

2 BY MR. SHAINIS:

3 Q I believe the last one I asked was Centech
4 Communications?

5 A You asked Lone Star.

6 Q Lone Star Radios.

7 A Well, maybe with the principals of Lone Star. I'm
8 not sure when they began using that name.

9 Q Communications Business Network?

10 A Yes.

11 Q Harris Communications?

12 A Yes.

13 Q Macammco, that's M-A-C-A-M-M-C-O?

14 A Yes, not sure when we started with them.

15 Q California Mobile Cellular?

16 A He's fairly new. I'm not sure he was on in that
17 period of time.

18 Q Percom? That's P-E-R-C-O-M.

19 A Yes.

20 Q Hi-Desert Communications?

21 A He's fairly new, yes.

22 MR. SCHAUBLE: Excuse me, yes in terms of he was
23 on in December of '94 or yes, he's on currently?

24 THE WITNESS: He's on currently. I'm not sure if
25 he was on back then.

1 MR. SCHAUBLE: Thank you.

2 BY MR. SHAINIS:

3 Q Air Wave Communications?

4 A Yes.

5 Q It looks like Fidelcom, F-I-D-E-L-C-O-M?

6 A Fidelcom, yes. They no longer exist now.

7 Q But, they existed back prior to --

8 A Yes.

9 Q -- prior to December 31, 1994?

10 A Yes.

11 Q Bear, B-E-A-R, Communications?

12 A Yes.

13 (Pause.)

14 CHIEF JUDGE CHACKIN: We'll take a five minute
15 break.

16 (Whereupon, a short recess was taken.)

17 CHIEF JUDGE CHACKIN: Back on the record.

18 MR. SHAINIS: So, we're not waiting for --

19 CHIEF JUDGE CHACKIN: Go ahead.

20 (Pause.)

21 MR. SHAINIS: Bear with me one moment, Your Honor.

22 Your Honor, I'd like to approach the witness, if I might?

23 CHIEF JUDGE CHACKIN: Yes, go ahead.

24 MR. SHAINIS: I'm going to hand the witness a
25 document, and unfortunately, I thought it was numbered and

1 it is not. It's an application, however.

2 MR. KELLER: Well, actually, it is, because
3 they're numbered on the tabs. The forms are numbered and
4 the item isn't. It got cut off.

5 MR. SHAINIS: Yes, that's the problem. Anyway,
6 Your Honor, it's an application submitted May 6, 1994 to the
7 Federal Communications Commission. I'd like it identified
8 as Kay Exhibit 65.

9 CHIEF JUDGE CHACKIN: The document described will
10 be so marked.

11 (The document referred to was
12 marked for identification as
13 Kay Exhibit 65.)

14 MR. SHAINIS: Your Honor, this was an application
15 that had been provided to the Bureau sometime during the
16 commencement of the hearing. I think during the first week
17 or the first week and a half of the hearing.

18 (Pause.)

19 BY MR. SHAINIS:

20 Q Mr. Kay, do you have the application in front of
21 you?

22 A Yes.

23 Q Could you explain what that application does?

24 A This application seeks to modify, combine 34
25 separate call signs into one call sign, to place 22

1 frequencies with six fixed locations onto the one call sign.
2 It amends the areas of operation, adds and deletes stations
3 and also requests to trunk the frequencies together for more
4 efficient use of the spectrum and also amends the number of
5 mobile units that will be offered in other frequencies.

6 Q First of all, is this application applied in your
7 name?

8 A Yes, it is.

9 Q How does it amend the number of mobile units that
10 are operating?

11 A If one takes the total number of mobile units
12 associated with all the call signs and compares that to the
13 number now requested, it's approximately a 40 percent
14 reduction in the authorized number of mobiles from what had
15 been previously licensed.

16 Q Had you ever done the computations so that you
17 know it's approximately a 40 percent reduction?

18 A Yes, I did.

19 MR. SHAINIS: Your Honor, I'd like to approach the
20 witness.

21 CHIEF JUDGE CHACKIN: Go ahead.

22 MR. SHAINIS: Just a moment. Your Honor, I'd like
23 to present the witness, and I'll distribute to the other
24 parties and to yourself, a copy of Kay proposed Exhibit 66.

25 CHIEF JUDGE CHACKIN: Could you describe the

1 document?

2 MR. SHAINIS: Yes, Your Honor, it's a one page
3 document that's entitled At License List. It's a
4 handwritten document, Kay Exhibit 66.

5 CHIEF JUDGE CHACKIN: The document so described
6 will be marked for identification as Kay Exhibit 66.

7 (The document referred to was
8 marked for identification as
9 Kay Exhibit 66.)

10 BY MR. SHAINIS:

11 Q Mr. Kay, do you recognize this document?

12 A Yes, this is a pencilled note I made a few days
13 ago.

14 Q Okay, so it's your handwriting on the document?

15 A Yes.

16 Q What do the calculations represent on this
17 document?

18 A What I did here is, I took my 5/16/94 letter where
19 it notes Item 36, call sign WIJ, 14 is call signs, lists a
20 whole series of other call signs -- I took that series of
21 licenses, converted it to alphabetical and numbered them one
22 through 34. I then looked up on the -- from the exhibits
23 list hearing each call sign and the number of mobile units
24 authorized to that call sign, wrote it down, together with
25 the frequency.

1 For example, Item 1 is KJV 843. It's authorized
2 for 180 mobiles on frequency 472.2125 MHz. I did this with
3 all the call signs on the list. I totalled up all the
4 mobile loading counts which came to 3,525. The application
5 request, 1,980 mobiles, so I subtracted 1,980 from 1,935,
6 which yielded a decreased number of authorized mobiles of
7 1,545, which is approximately 40 percent of 3,525.

8 Q Okay, and the application, what was the
9 disposition of this application?

10 A It's still pending, along with everything else.

11 Q Okay, and to the best of your knowledge, the
12 application was properly filed, correct?

13 MR. SCHAUBLE: Objection to the term properly
14 filed.

15 CHIEF JUDGE CHACKIN: Sustained.

16 BY MR. SHAINIS:

17 Q To the best of your knowledge, this application
18 has never been returned by the Commission, is that correct?

19 A It has never been returned.

20 Q Have you ever received any letter of inquiry
21 concerning this application?

22 A No.

23 Q Do you know of any reason why this application
24 should not be granted?

25 MR. SCHAUBLE: Objection.

1 CHIEF JUDGE CHACKIN: Overruled.

2 THE WITNESS: No technical reason.

3 CHIEF JUDGE CHACKIN: Let me ask the Bureau, how
4 does this application, if it was granted, affect the loading
5 issue?

6 MR. SCHAUBLE: Your Honor --

7 MR. KNOWLES-KELLETT: I think our questions, Your
8 Honor, will make it somewhat clear. The loading issue
9 requires him to share all channels that are not fully
10 loaded, and this application is not a 9135AB5 application
11 which says, yes, I'm now fully loaded and I'm ready to share
12 this channel.

13 This channel just says, I want exclusivity on all
14 these and please waive the rules. You know, it doesn't
15 address the fact that these channels aren't loaded.

16 MR. SCHAUBLE: There is a waiver request in
17 connection with this application.

18 MR. KNOWLES-KELLETT: This application is not
19 contemplated by the rules.

20 CHIEF JUDGE CHACKIN: Does it impact on the
21 loading issue?

22 MR. KNOWLES-KELLETT: We believe it does not, Your
23 Honor. You know, what this essentially does is, the request
24 that we waive our rules, while this waiver request cites
25 that it wants a waiver of Rule 301, what it does, it allows

1 essentially for aggregate loading, which is a concept used
2 at 800 but never at -- not at 470. I can't say never.
3 There may have been one such waiver granted.

4 But, what that does, that means if you've got --
5 say you have ten stations and you have too many mobiles
6 operating on one of them, it -- say you have 200 mobiles
7 over here and -- and over here you don't have quite 90's.
8 If you can get average at loading, the Commission just sort
9 of waves the magic wand and says it's -- but, we've never
10 permitted it -- or, if we have, it's been seldom.

11 CHIEF JUDGE CHACKIN: I assume it will be brought
12 out in the conclusions where this is an unusual request for
13 how it's been treated, the use of these frequencies. All
14 right, continue.

15 MR. KNOWLES-KELLETT: Counsel can correct me if I
16 mischaracterized the application.

17 MR. KELLER: Pardon me?

18 MR. KNOWLES-KELLETT: Did I mischaracterize?

19 MR. SHAINIS: Let's ask the witness.

20 BY MR. SHAINIS:

21 Q Mr. Kay, you heard what Mr. Kellett just stated.
22 Is that correct concerning the application?

23 A Yes.

24 Q Did he in anyway mischaracterize what was being
25 done with the application?

1 A I disagree with some of his conclusions, because
2 I've already -- for this purpose on page B, miscellaneous B.
3 This application requests waiver of 90.301. The detach
4 application waiver to trust -- the frequencies in order to
5 make more efficient use of the remaining spectrum. Previous
6 waivers have already been granted for this purpose. See
7 Mobile UHF Inc., call sign WIJ 16, granted 8/8/91. So,
8 they've already done this. This is standard practice as far
9 as allowing trunking of UHF stations, this concern. It
10 reduces the mobile count on all of the frequencies,
11 regardless.

12 My mobile count on each individual channel, if you
13 look at it that way, would also be reduced.

14 CHIEF JUDGE CHACKIN: What is this reference, Mr.
15 Kay, contained in this letter, Mobile UHF, Inc. WIJ 816?
16 What is that reference to?

17 THE WITNESS: Mobile UHF is a private carrier, an
18 SMRS operator in the Los Angeles area, a fellow by the name
19 of Chuck Wells. He asked for and received a waiver of the
20 rules to trunk numerous subparty frequencies together, just
21 like this application is proposing to do. I'm simply
22 proposing the same thing that Chuck Wells, Mobile UHF, had
23 already done, and I'm simply citing his call sign and the
24 waiver that was granted to him in his name. The Commission
25 is totally familiar with Mr. Wells.

1 BY MR. SHAINIS:

2 Q This application permits you to reduce the mobile
3 count, as well as maintain exclusivity, is that correct?

4 A That's correct.

5 Q And, to the best of your knowledge, this is
6 something that has been done in the past by Mr. Wells and
7 his application?

8 A That's correct.

9 Q So, your expectation at the time this application
10 was filed was that would be consistent with prior Commission
11 precedent, would that be correct?

12 A Yes.

13 Q At the time of the application and now, were you
14 and are you now loaded to the limits described in the
15 application?

16 MR. SCHAUBLE: Could you repeat the question,
17 please?

18 BY MR. SHAINIS:

19 Q Yes, at the time of the application and continuing
20 today, are you loaded consistent with what is stated in this
21 application?

22 A Do I have 1,980 mobile and portable units
23 available?

24 Q Yes?

25 A Between my inventories and my existing paying

1 customers and the dealers I work with, I believe yes. I
2 haven't verified that independently recently, but I have no
3 reason to believe I don't have that many available.

4 MR. SHAINIS: Thank you. Your Honor, I'd like Kay
5 Exhibit 65 to be admitted into evidence.

6 CHIEF JUDGE CHACKIN: Any objection?

7 MR. SCHAUBLE: Your Honor, I believe ultimately
8 the Bureau's position on this application is insignificant,
9 but in light of the testimony, we have no objection to the
10 document coming in.

11 CHIEF JUDGE CHACKIN: Kay Exhibit 65 is received.

12 (The document referred to,
13 having been previously marked
14 for identification as Kay
15 Exhibit 65, was received in
16 evidence.)

17 MR. SHAINIS: I'd also like to have admitted Kay
18 Exhibit 66.

19 CHIEF JUDGE CHACKIN: Any objection? Hearing none
20 -- pardon?

21 MR. SCHAUBLE: No objection, Your Honor.

22 CHIEF JUDGE CHACKIN: Kay Exhibit 66 is received.

23 (The document referred to,
24 having been previously marked
25 for identification as Kay

1 Exhibit 66, was received in
2 evidence.)

3 BY MR. SHAINIS:

4 Q Mr. Kay, a question I forgot to ask, but just so I
5 don't forget it, how long have you known Marc Sobel?

6 A Since at least the mid-70s.

7 Q How did you meet him?

8 A I was doing radio and television repair. He sold
9 parts at a company called Sammy's Electronics. Also, I got
10 into citizen's band and Marc was already into that. We used
11 to transmitter hunt together.

12 Q You used to do what together?

13 A Transmitter hunt.

14 Q Transmitter hunt?

15 A Yes.

16 Q Could you explain what that is?

17 A CBers would get together in various activities,
18 one of which was perfecting dial transmitters. We'd look
19 for hidden transmitters electronically.

20 Q You have been friends with Mr. Sobel since the
21 70s, is that correct?

22 A That's correct.

23 Q In addition to being friends, you also conduct
24 business with Mr. Sobel, is that correct?

25 A Yes.

1 Q What is the nature of your business relationship
2 with Mr. Sobel?

3 A I sell him things, he sells me things. I lease
4 space to him, he leases space to me. I need repair work
5 done, I pay him to do it. He needs advice from me, I give
6 it to him. Sometimes I charge him, usually I don't.
7 Basically, if he needs something, he gets it from me or I
8 get it from him. It's been a business relationship
9 convenience for a long time.

10 Q Do you consider him an employee of yours?

11 A He is not an employee of mine.

12 Q Would he best be described as an independent
13 contractor?

14 A He's an independent businessman who contracts to
15 me, along with numerous other business activities he does.

16 MR. SHAINIS: Your Honor, I believe Bureau Exhibit
17 289 has been received into evidence.

18 CHIEF JUDGE CHACKIN: Two eighty nine?

19 MR. SHAINIS: Yes.

20 MR. SCHAUBLE: That's the Forestry Service
21 permits.

22 MR. SHAINIS: Yes, you've got a good memory. I
23 submit that there has been no demonstration of any relevance
24 of this exhibit to Mr. Kay's loading, and I move that it be
25 stricken.

1 MR. SCHAUBLE: Your Honor, there was no objection
2 to the exhibit at the time, at the admission session.

3 MR. KELLER: Well, that's true, but we've now
4 heard most of the testimony in the hearing and we don't know
5 if there's been any testimony to tie this to any specific
6 factual issue in the case.

7 CHIEF JUDGE CHACKIN: We're talking about 289?

8 MR. SHAINIS: Yes.

9 CHIEF JUDGE CHACKIN: Well, 288 was not offered --
10 289 was received. That's the Forestry Service permits.

11 MR. SHAINIS: Yes, I understand.

12 CHIEF JUDGE CHACKIN: What is the potential of
13 those permits, counsel?

14 MR. KNOWLES-KELLETT: These permits, Your Honor,
15 are like leases. They speak for themselves. We discussed
16 the issue of permits with Mr. Kay. We didn't discuss these
17 particular ones with Mr. Kay, but they go to, you know, they
18 go to whether or not different stations were constructed,
19 the relevance of that. They put it in for the same purpose.

20 MR. SCHAUBLE: They have their own exhibits of
21 this type in evidence, which has been put in as Kay's
22 exhibits and if nothing else, for a complete record --

23 MR. KNOWLES-KELLETT: He's saying we didn't tie
24 them to the loading issue. We weren't expecting to tie them
25 to the loading issue.

1 MR. SHAINIS: I meant construction, I'm sorry.

2 CHIEF JUDGE CHACKIN: So, what issue were you --

3 MR. KNOWLES-KELLETT: It's the issue of
4 construction, Your Honor, and these are leases. I don't
5 think that you can have any doubt that site leases for
6 particular frequencies are relevant to construction.

7 CHIEF JUDGE CHACKIN: That may be, but have you
8 offered any evidence showing that, in fact, he did not
9 construct at all of his sites?

10 MR. KNOWLES-KELLETT: To begin with, we had a
11 stipulation that certain things were not constructed as a
12 result of the inspection and Mr. Kay's admissions.

13 CHIEF JUDGE CHACKIN: Right.

14 MR. KNOWLES-KELLETT: I don't think there's any
15 argument about that.

16 CHIEF JUDGE CHACKIN: All right, fine.

17 MR. KNOWLES-KELLETT: Since we produced this
18 exhibit, we've illustrated call signs that Mr. Kay
19 demonstrated work -- it says work constructed promptly, and
20 we said from the fact that there are no customers on the
21 station, that there's no Forestry Service permit, and no
22 other, and he doesn't keep the 90, whatever, 443 or 90.215
23 records that he's required to keep when he puts a
24 transmitter in service. We were going to ask for an adverse
25 inference that these are not constructed.

1 We've got to see how the transcript comes out on
2 that. In light of their conflicting evidence, both that
3 they've exchanged and we may be backing off on some of those
4 assertions. But, with respect to those particular call
5 signs, that was our case.

6 CHIEF JUDGE CHACKIN: And, the witness has
7 testified that each of those sites, it was, in fact, a
8 timely construction?

9 MR. SHAINIS: Yes, Your Honor.

10 CHIEF JUDGE CHACKIN: And, you have no evidence to
11 the contrary?

12 MR. KNOWLES-KELLETT: We believe we do. The
13 evidence I described. We have no direct evidence to the
14 contrary. We're asking for an adverse inference, based on
15 various facts.

16 CHIEF JUDGE CHACKIN: What's the adverse inference
17 based on?

18 MR. KNOWLES-KELLETT: The fact that there are no
19 customers as of the time when they were supposed to be
20 constructed, okay. That there was no permit and he doesn't
21 keep the required records.

22 MR. KELLER: What is the evidence that there's no
23 customers?

24 MR. KNOWLES-KELLETT: All his customer records,
25 all the customers are in that exhibit.

1 MR. SCHAUBLE: Exhibit 19.

2 MR. KNOWLES-KELLETT: You can look at Exhibit 19,
3 which is his loading, call sign by call sign, and if there's
4 no loading on a call sign, there are no customers on it.

5 MR. KELLER: That's not what the record reflects
6 so far in this proceeding.

7 MR. KNOWLES-KELLETT: What do you mean?

8 MR. KELLER: It just reflects that there's no
9 paying customer reflected in the billing records as of a
10 specific time.

11 MR. KNOWLES-KELLETT: Your Honor, I think that
12 their arguments all go to the sufficiency of our evidence.

13 MR. KELLER: Well, I think I may be able to help
14 with that. We may be able to come to an agreement.

15 CHIEF JUDGE CHACKIN: We'll go off the record.

16 (Whereupon, a short recess was taken.)

17 CHIEF JUDGE CHACKIN: Back on the record. Have
18 you reviewed this document, counsel, Mr. Schauble?

19 MR. SCHAUBLE: I'm sorry, Your Honor?

20 CHIEF JUDGE CHACKIN: Have you reviewed 289?

21 MR. SCHAUBLE: Yes, Your Honor, I have.

22 CHIEF JUDGE CHACKIN: And, can you state which
23 cases or which permits were not given by the Forestry
24 Service, that you're going to claim to draw your inference
25 from?

1 MR. KNOWLES-KELLETT: There is a summary, Your
2 Honor, that we did not offer, right in front of 289.

3 MR. SCHAUBLE: It's not in evidence in this
4 proceeding, but it says what we think there is no permit
5 for.

6 MR. KELLER: So, you're saying we can expect you
7 to offer something similar to this summary?

8 MR. KNOWLES-KELLETT: To some extent, based on
9 your evidence, we're backing off of it.

10 MR. KELLER: Okay. But, that summary would be
11 something akin to what we might see in findings?

12 MR. SCHAUBLE: Put it this way, we're not going
13 beyond.

14 MR. KNOWLES-KELLETT: We're not going beyond
15 anything not listed in that summary. But, more narrowly
16 than that was our statement of readiness for hearing.

17 MR. KELLER: Those specific call signs?

18 MR. KNOWLES-KELLETT: Right, other than those
19 stipulated that were not constructed or in operation, we're
20 not alleging anything beyond the specific call signs in our
21 statement of readiness of operation. This is not some sort
22 of ambush.

23 MR. SCHAUBLE: Okay, and based upon the testimony
24 ultimately in our findings, we may not be seeking adverse
25 findings with respect to all of those, either.

1 MR. SHAINIS: You mean adverse conclusions?

2 MR. SCHAUBLE: Adverse conclusions.

3 CHIEF JUDGE CHACKIN: So, you have gone through
4 each of the construction permits by the Forestry Service
5 listed in the summary here and have an explanation from it,
6 or what?

7 MR. KELLER: Well, no, I mean, what I'm hearing
8 the Bureau say first of all is that Exhibit 289 is all of
9 the Forestry Service, which we produced at one given time in
10 response to a specific discovery request. And, what they're
11 essentially going to be arguing is the negative. In other
12 words, drawing inferences from what is not into it. That's
13 part of what we're countering with Exhibits 12 through 31.

14 CHIEF JUDGE CHACKIN: Yes, I understand.

15 MR. KELLER: And, what they're further saying is
16 that list of call signs, that even within that universe,
17 they're only going to be potentially making adverse
18 allegations or proposing adverse findings and conclusions
19 against this with respect to a specific list of call signs
20 that Mr. Shainis questioned the witness about this morning.

21 So, I mean, I'm satisfied now that at least we
22 know what we're shooting at.

23 CHIEF JUDGE CHACKIN: And, you're going to base it
24 simply on the fact that despite this witness' testimony,
25 that he hasn't produced the permit?

1 MR. KNOWLES-KELLETT: No records as required by
2 the rule. No customers, no permit, Your Honor. Your Honor,
3 in light of his testimony, we're talking about a dozen call
4 signs and we've got to take his testimony into account and
5 then we may be backing off of those, as well. We've got to
6 review the record, but I'm correct, Mr. Keller, I said two
7 things.

8 One is those things there's no disagreement about.

9 CHIEF JUDGE CHACKIN: Subject to the stipulation?

10 MR. KNOWLES-KELLETT: There was a stipulation
11 regarding stations that Mr. Kay admitted were not
12 constructed in '96 and the field office found were not
13 constructed in '97. That's a different category. Those
14 aren't really in contention, I don't think.

15 MR. KELLER: No, the record will reflect it, but I
16 believe the phraseology of the stipulation as to those
17 stations so indicated on the exhibit, and it's another
18 Bureau exhibit. They were so marked. We stipulated that
19 they were either not constructed or discontinued within the
20 meaning of the specified Commission rule, and that's on the
21 record already.

22 MR. KNOWLES-KELLETT: Okay, but that's just two
23 categories. And, then, with respect to this adverse
24 inference, there's a list of, I don't know, ten call signs,
25 12 call signs, that Mr. Kay is putting in evidence that

1 those are constructed.

2 CHIEF JUDGE CHACKIN: Now, in addition to that, do
3 Kay's exhibits contain permits for these stations which the
4 Bureau has called into question?

5 MR. KELLER: Your Honor, I don't want to testify
6 more than I usually do, but I believe what the testimony
7 will show, the testimony together with the exhibits will
8 show, is that Kay was, you know, on the eve of hearing,
9 presented for the first time with that specific list of call
10 signs and went and dug out the records that he was able to
11 have.

12 Now, we're not going to maintain that we've got
13 complete records as to each and every case, but we've got
14 his testimony, his specific recollections and to the extent
15 that we had some documentation that we thought was probative
16 to go to countering the inference, those documents are in
17 Exhibits 12 through 31.

18 And, Mr. Kay is here today to testify about the
19 few that are not into evidence yet, so we can get them
20 authenticated and into evidence.

21 CHIEF JUDGE CHACKIN: All right. Let's go ahead,
22 then.

23 MR. SHAINIS: Your Honor, I'd like to approach the
24 witness and show him --

25 CHIEF JUDGE CHACKIN: Yes.

1 MR. SHAINIS: Kay Exhibit 15, which has been
2 identified?

3 CHIEF JUDGE CHACKIN: Yes.

4
5 BY MR. SHAINIS:

6 Q Mr. Kay, would you look at that exhibit, please?

7 A Yes.

8 Q Mr. Kay, it refers to James A. Kay on this. Are
9 these facilities that have been constructed or have not been
10 constructed? And, the date of the letter is January 2,
11 1987.

12 A I believe these were proposed at that time, which
13 was January 2, 1987, for four frequencies for which I was
14 making the application.

15 Q Are there any frequencies on this letter that you
16 have that shows either customers of yours or your facilities
17 that would show construction? That had been constructed,
18 rather?

19 A One already down here, Lucky's Two-Way Radios, for
20 frequency 471.8875, that would already be an existing
21 facility at the time that this was wrote in 1987.

22 Q How do you know that?

23 A The top one here says proposed frequencies, then
24 it says existing users of record. And, applicant shows
25 James A. Kay making proposal for four frequencies and one of

1 those same frequencies is listed as Lucky's Two-Way Radios,
2 which was me. Back somewhere in that time, I switched my
3 permits from being in the company name of Lucky's Two-Way
4 Radios to being in my own name, and hence, why I'm, in
5 effect, listed here twice, one as the company name and one
6 as personal.

7 MR. SHAINIS: Okay, thank you. Your Honor, I ask
8 that this be admitted into evidence.

9 CHIEF JUDGE CHACKIN: Any objection?

10 MR. SCHAUBLE: No objection for purposes of the
11 one frequency discussed, Your Honor.

12 CHIEF JUDGE CHACKIN: Kay Exhibit 15 is received.
13 (The document referred to,
14 having been previously marked
15 for identification as Kay
16 Exhibit 15, was received in
17 evidence.)

18 BY MR. SHAINIS:

19 Q Mr. Kay, I'm going to show you what's been
20 identified as Kay Exhibit 16. Would you please look at
21 that?

22 A Yes.

23 Q And, is that a station that has been constructed
24 or proposed to be constructed?

25 MR. SCHAUBLE: Objection, Your Honor. I don't see

1 any reference to any station in here.

2 MR. SHAINIS: I'm sorry.

3 BY MR. SHAINIS:

4 Q It's dealing with the electronic linear equipment
5 at Sierra Peak on March 26, '86, is that correct?

6 A That was when the initial permit was issued to
7 TLF, 3/26/86. This letter is dated January 28, 1992. I had
8 been in the TLF Building since approximately February of
9 1990, almost two years prior to this letter.

10 Q You'd been there with a constructed facility, is
11 that correct?

12 A That's correct, with an active lease and
13 constructed facilities, but my permit, which was still on
14 the Meridian Building at Sierra Peak, had not yet been
15 transferred, even though I'd been out of that building for
16 two years.

17 Q Transferred as far as Forestry Service purposes?

18 A Correct. I was in the Meridian Building in
19 approximately 1987 through the first part of, through like
20 January of 1990, February of 1990, relocated with Forestry's
21 permission to the TLF Building, but it was more than two
22 years subsequent to that that I applied for upgrading and
23 modification of my Forestry permit for Sierra Peak to
24 reflect a new building and a whole host of new frequencies
25 that had already been constructed.

1 Q Do you recall the frequencies that this covers?

2 A They were upset I didn't even have a permit to be
3 in the TLF Building but plainly was there. They were
4 saying, get your permit modified to reflect the building
5 you're in and all the frequencies you're running.

6 CHIEF JUDGE CHACKIN: You asked the question about
7 the frequency this reflects.

8 MR. SHAINIS: Well, the frequency they were
9 talking about that you're changing, that is the subject of
10 this letter. They don't mention frequencies. Do you know
11 what the frequencies are? At that time, they'd already
12 constructed.

13 THE WITNESS: I filed an application with the
14 Forestry that had a whole list of the frequencies that I
15 already had in there. Basically, that was a nudge to update
16 my permit to reflect what I was doing, as compared to what
17 I'd been doing in previous years.

18 MR. SHAINIS: Your Honor, I ask that this be
19 admitted into evidence.

20 CHIEF JUDGE CHACKIN: Any objection?

21 MR. SCHAUBLE: Yes, Your Honor. If this referred
22 to specific frequencies here, I could say where this would
23 be properly tied in, but we don't have any Bureau data that
24 Mr. Kay had equipment on Sierra Peak. Because the question
25 is to which particular frequencies were constructed, and I

1 don't think this particular exhibit assists the record in
2 any way in that regard.

3 CHIEF JUDGE CHACKIN: Can you identify the
4 frequencies, Mr. Kay? You said there was a whole list. Can
5 you identify at least some, if not all of them?

6 THE WITNESS: I believe it's already in the
7 Forestry permits, that application. It's already part of
8 the record. When I modified my application for Sierra Peak,
9 I included all the frequencies that I already had there,
10 plus more proposed ones.

11 CHIEF JUDGE CHACKIN: Can you point to the record
12 where they are, counsel?

13 MR. SHAINIS: I believe -- let me ask Mr. Kay --
14 maybe your Exhibit 289.

15 CHIEF JUDGE CHACKIN: Maybe 288? I think the only
16 question is, does it deal with any of the frequencies the
17 Bureau has raised questions about in 288?

18 THE WITNESS: Yes.

19 CHIEF JUDGE CHACKIN: And, if so, just list those
20 frequencies that the Bureau has --

21 MR. SHAINIS: Actually, I can show him, Your
22 Honor.

23 CHIEF JUDGE CHACKIN: All right.

24 BY MR. SHAINIS:

25 Q This is what the Bureau has raised questions on.

1 MR. KNOWLES-KELLETT: Is that what you showed us,
2 their letter?

3 MR. SHAINIS: Yes.

4 MR. KNOWLES-KELLETT: That lists the call signs?

5 MR. SHAINIS: Yes.

6 THE WITNESS: Several of these call signs are for
7 Sierra Peak, specifically WIK 726, WIK 896, WIK 664, WIL
8 260, WIK 983, WIL 469. One of the stations of WIH 339, WIK
9 875, WIK 287, WIK 374. The frequencies for all these
10 stations were placed on the application to amend my Forestry
11 permit, which was done in 1992, even though I had all these
12 frequencies already constructed and operating in the TLF
13 Building as early as 1990. As a matter of fact, one of the
14 frequencies I found had been granted in 1989, and had been
15 constructed in the Meridian Building shortly before I moved
16 to the TLF Building.

17 They cite customer records for billing, yet they
18 only requested information from January 1, 1991 to date.
19 Several of the grants and any customer records that would
20 correspond to operation on those stations predating the
21 period of time the Bureau requested billing records for.

22 MR. SCHAUBLE: Your Honor, the record will reflect
23 that with respect to Forest Service permits, there was no
24 sign of a request --

25 MR. SHAINIS: There was no what in your request?

1 CHIEF JUDGE CHACKIN: What is that?

2 MR. SHAINIS: Your Honor, we're providing him with
3 Kay Exhibit 20.

4 CHIEF JUDGE CHACKIN: All right. Do you still
5 object to Kay Exhibit 16?

6 MR. KELLER: Well, I think this will clear it up.

7 CHIEF JUDGE CHACKIN: This will clear it up? All
8 right.

9 THE WITNESS: This is a letter dated --

10 BY MR. SHAINIS:

11 Q This meaning Kay Exhibit 20?

12 A Four 22, '92 to the U.S. Forest Service, attention
13 Gloria GiGi Pieper. It reads, "Attached is an application
14 to relocate by special use permit from the Meridian Building
15 at Sierra Peak to a TLF leasing building at Sierra Peak."
16 And, of course, by telephone conversation with her, I
17 included a list of the FCC licenses with call signs and
18 grant dates and I have completed all the forms necessary to
19 do it."

20 It also explained a little bit about how the
21 licensing is done, but basically, this was the cover letter,
22 because I had with Forestry's verbal permission, relocated
23 at the start of 1990, by February of 1990 or January of
24 1990, from the Meridian Building to the TLF Building and had
25 to not only move existing repeaters from Meridian to TLF,

1 but had constructed a large quantity of additional repeaters
2 at the TLF Building.

3 I was now finally, more than two years after that
4 move and after a lot of construction, bringing my Forestry
5 permits up to date as the Forestry people wanted me to do,
6 but it was a massive amount of paperwork and they weren't
7 particularly chomping at the bit to have me do it and I
8 certainly wasn't, because it was a ton of work, but I
9 eventually did do it. I brought my Forest Service permit
10 current, reflecting the building I was in and all the
11 frequencies that I had constructed.

12 Q I think later in the exhibit, Mr. Kay, there is a
13 list of frequencies?

14 A Well, this list of frequencies here is what one of
15 my competitors had been told that I had down there, but that
16 list was about seven years -- at the time, would have been
17 five years old from 1987. It was not up to date, but that's
18 what the Forestry records were still showing, five year old
19 information. So, it was more than time for me to update my
20 permits to reflect everything I had in there.

21 And, in the picture here it shows that I had seven
22 footprints, which would be seven foot tall equipment
23 cabinets, each capable of handling up to 11 repeaters for
24 cabinets. So, I had room at Sierra Peak for 77 repeaters.

25 MR. SHAINIS: Your Honor, I request that Exhibit

1 16 be admitted.

2 CHIEF JUDGE CHACKIN: Any objection?

3 MR. SCHAUBLE: No objection, Your Honor.

4 CHIEF JUDGE CHACKIN: Kay Exhibit 16 is received.

5 We still have 21 and 22, which ruling has been withheld on.

6 (The document referred to,
7 having been previously marked
8 for identification as Kay
9 Exhibit 16, was received in
10 evidence.)

11 MR. KELLER: That's correct.

12 MR. SHAINIS: Your Honor, I'm handing the witness
13 a copy of Kay Exhibit 21.

14 BY MR. SHAINIS:

15 Q Mr. Kay, would you review that, please?

16 A Yes.

17 Q And, can you explain how that indicates
18 construction had been done?

19 A This is one of my customers, Terry Parks, who ran
20 a couple called Sign-Up and he initially applied for one 470
21 channel for Mount Lukens and Sierra Peak in 1988. It was
22 subsequently changed to a different frequency, but still
23 with the Mount Lukens and Sierra Peak. This was ultimately
24 granted as a community repeater license and subsequently
25 became one of the stations that I converted to a private

1 carrier at Sierra Peak. This was one of the stations I had
2 constructed at Sierra Peak in the late '80s, before I ever
3 moved over to the TLF Building. I believe it's one of the
4 frequencies, 471.9125, that matches up with one of the call
5 signs the Commission had questioned as to whether I ever
6 constructed at Sierra Peak. Here's one of my customers
7 that, well, he was in there awful early, 1988, well before
8 the grant of my license for private carrier on that
9 frequency, and I believe his billing records in here reflect
10 that I provided service to this customer through 1993 and we
11 gave service to this customer off of 471.9125.

12 MR. SCHAUBLE: Excuse me.

13 CHIEF JUDGE CHACKIN: Have you finished your
14 answer?

15 THE WITNESS: Yes.

16 MR. KNOWLES-KELLETT: We were just wondering where
17 you got the 471.9125?

18 THE WITNESS: Well, if you take a look at the
19 frequency coordination form, kind of scribbled in there in
20 the middle -- it's kind of hard to read, but it says,
21 "Change to 471.9125." This was a color copy, but this
22 customer never got granted on 472.0375, but he did get
23 granted on 471.9125.

24 Also, when we initially began service, which was
25 May of 1988 on this repeater contract, it shows Mount

1 Lukens, but Sierra was subsequently added for free, but in
2 Item 3 on there, it says 471.9125, which is the MHz on the
3 repeater contract, number 255.

4 We billed them for Lukens, but didn't charge them
5 for Sierra.

6 BY MR. SHAINIS:

7 Q At the time you converted it, the receiver was
8 already built, is that correct?

9 A Absolutely, it was an existing facility. To the
10 best of my recollection, it was an existing facility. I'd
11 have to look on my construction chart, but I believe the
12 grant date and the construction date are showing it's the
13 same date, which would be indicative of an existing physical
14 piece of hardware in the repeater being there at Sierra
15 Peak.

16 MR. SHAINIS: Your Honor, I ask that it be
17 admitted.

18 CHIEF JUDGE CHACKIN: Any objection to 21?

19 MR. SCHAUBLE: No objection, Your Honor.

20 CHIEF JUDGE CHACKIN: Kay Exhibit 21 is received.

21 (The document referred to,
22 having been previously marked
23 for identification as Kay
24 Exhibit 21, was received in
25 evidence.)

1 MR. SHAINIS: Thank you, Your Honor. Your Honor,
2 may I approach the witness and show him Kay Exhibit 22?

3 BY MR. SHAINIS:

4 Q I'll ask, Mr. Kay, can you review that exhibit?

5 A Now, this is an application for Ronald Hawley, to
6 do business as Hawley Construction Company. It requested
7 frequency 508.1875 MHz, with numerous facilities, including
8 Sierra Peak. This application is dated November 10, 1986.
9 508.1875 MHz is one of the frequencies of one of the
10 community repeaters that I had at Sierra Peak, that was
11 subsequently converted to a private carrier, and that
12 frequency is associated with one of the call signs the
13 Commission has challenged the construction of.

14 MR. SHAINIS: Your Honor, I ask that that be
15 admitted.

16 CHIEF JUDGE CHACKIN: Any objection?

17 MR. SCHAUBLE: No objection.

18 CHIEF JUDGE CHACKIN: Kay Exhibit 22 is received.

19 (The document referred to,
20 having been previously marked
21 for identification as Kay
22 Exhibit 22, was received in
23 evidence.)

24 MR. SHAINIS: Just a minute, Your Honor.

25 (Pause.)

1 MR. SHAINIS: Your Honor, I'm going to show the
2 witness Kay Exhibit 31.

3 BY MR. SHAINIS:

4 Q Mr. Kay, if you could tell us about that exhibit?

5 A This is my customer, All Cities Transportation
6 Company, which was an existing licensee on frequency 463.375
7 at Mount Lukens and Santiago Peak. They came to us in
8 November of 1993 to get repeater service from us, because
9 they were dissatisfied with their current repeater service
10 provider. We put up repeaters for them at Mount Lukens and
11 Santiago Peak, which operated under their call sign.

12 We simultaneously, or shortly thereafter, applied
13 for a license for a new private carrier repeater system to
14 be located at Santiago Peak and Mount Lukens on the same
15 frequency. This was WP EE 253, I believe. It is one of the
16 licenses the Commission has challenged the construction of.

17 This customer was existing, operating and using
18 physical facilities at Lukens and Santiago, prior to our
19 grant of the license. He subsequently, when our license was
20 granted, began offering under private carrier, which was
21 already constructed at the time of grant. So, this shows
22 that we had the repeaters, the customer was there using both
23 facilities at the time our license was granted. So, it was
24 there.

25 MR. SHAINIS: Thank you. Your Honor, I ask that

1 it be admitted.

2 CHIEF JUDGE CHACKIN: Any objection?

3 MR. SCHAUBLE: No objection, Your Honor.

4 CHIEF JUDGE CHACKIN: Exhibit 31 is received.

5

6 (The document referred to,
7 having been previously marked
8 for identification as Kay
9 Exhibit 31, was received in
10 evidence.)

11 BY MR. SHAINIS:

12 Q Mr. Kay, I'm providing you with what has now been
13 admitted as Kay Exhibits 12 through 31 and the Bureau had
14 raised an issue that some of those Forest Service permits
15 that are contained in those exhibits were not provided in a
16 timely manner to the Bureau, specifically in discovery.

17 Could you explain a reason why that was not
18 provided?

19 A Which ones?

20 MR. KELLER: Which was your specific objection?

21 MR. SCHAUBLE: The first one was Exhibit 14.

22 BY MR. SHAINIS:

23 Q Exhibit 14?

24 A Exhibit 14 is an application for a special use
25 permit for Santiago Peak. Oh, this one, I think, was

1 submitted on a timely basis. I think they had this one
2 here. This one was for Santiago Peak at the Advance
3 Building.

4 Initially, when I constructed at Santiago Peak, I
5 constructed in the Meridian Building. I was only there for
6 about a six month period. When the Bureau asked me for USFS
7 records, I went to my file cabinets and pulled my files.
8 I've got big file folders labelled USFS records for the
9 various sites where U.S. Forestry has the land, and copied
10 them off.

11 When I was specifically challenged on WMJL 306,
12 its timely construction, I looked at the grant date, which I
13 believe was July of 1987, and looked at when they believed I
14 had a Forestry permit and saw that it was June, 1988 for the
15 Advance Building. I said, well, gee, I see the point
16 they're making here, and I remembered I had constructed in
17 the Meridian Building. So, I went searching my files and I
18 found a folder labelled Meridian Communications for Santiago
19 Peak, and I believe I found the Forestry permits in that
20 file. I hadn't done business with Meridian for Santiago
21 Peak since 1988, so it wasn't in the usual Forestry folder.
22 I don't know that I even had a Forestry folder at that time.

23 So, it was simply a misplaced document and when
24 specifically challenged on that station for that period of
25 time, I went looking for any document I could find, any

1 communications with Meridian, leases with them, and the
2 Forestry permit just happened to be in the folder to show
3 that I had been in that building. So, that's why it was
4 late. Totally unintentional on my part. If I knew it was -
5 - if they had said, we're questioning you on WJL 306, when
6 you constructed it, I'm sure I would have found it. But,
7 with just, we want all your Forestry records, I just gave
8 them the huge handfuls of Forestry records that I could
9 find. I copied everything in sight, as compared to pinpoint
10 looking for a specific Forestry site for a specific station.
11 I missed it, cause it wasn't where I would have looked for
12 it. It was not a specific challenge to that station.

13 MR. SHAINIS: Did you have any more objections?
14 If you tell us your objections, I'll explain why it wasn't
15 produced.

16 MR. SCHAUBLE: I believe the next one was, based
17 on the fact it was not produced, I believe the next one was
18 17.

19 BY MR. SHAINIS:

20 Q Mr. Kay, if you could look at Kay Exhibit 17?

21 A This is the special use permit, the original one I
22 had since 1985, to be in the Meridian Building and as I've
23 already discussed, we moved out of the Meridian Building
24 like in the first month or two of 1990.

25 So, this was sitting off somewhere in a file and